

Supreme Court, U.S.
FILED

05-695 NOV 23 2005

No. OFFICE OF THE CLERK

In the Supreme Court of the United States

POWER STANDARDS LAB, INC.,
Petitioner,

v.

FEDERAL EXPRESS CORPORATION,
Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeal Of The State Of California
First Appellate District, Division Four

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The preemption clause of the Airline Deregulation Act of 1978 (ADA) states in pertinent part that a "state . . . may not . . . enforce a law . . . related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

The first question presented is whether the court below erred when it defined the term "service" in the ADA's preemption clause to include an air carrier's adjustment of claims for property damage covered under a contract in which the carrier has voluntarily agreed to adjust such claims in a reasonable manner and in a reasonable time.

The second question presented is whether the court below erred when it held that the ADA's preemption clause prohibits an award of compensatory damages in the form of attorney's fees that a party to such a contract was compelled to incur as a result of the air carrier's breach.

**LIST OF PARTIES AND RULE 29.6
STATEMENT**

All the parties are listed in the caption. Petitioner Power Standards Lab, Inc., is a privately-held corporation without any parent corporation. No publicly-held corporation owns ten percent or more of its stock.

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I.**PETITION**

Petitioner Power Standards Lab, Inc. (PSL) respectfully requests that this Court cause issuance of a writ of certiorari to review the March 25, 2005 decision of the California Court of Appeal, First Appellate District, Division Four, in *Power Standards Lab v. Federal Express Corporation*, No. A103021 (published at 127 Cal. App. 4th 1039, 26 Cal. Rptr. 3d 202 (2005)), finding PSL's lawsuit barred under the Airline Deregulation Act of 1978 (ADA) and reversing a California Superior Court judgment entered in PSL's favor and against Federal Express Corporation (FedEx).

II.**OPINIONS BELOW**

The California Court of Appeal reversed the unreported, March 14, 2003 judgment of the Alameda County Superior Court. (Copy of the Court of Appeal's opinion reproduced at App. 1-19) The Court of Appeal denied PSL's petition for rehearing in an unreported summary order filed on April 11, 2005. (Copy at App. 20) The California Supreme Court denied PSL's petition for review in an unreported summary order filed on July 27, 2005. (Copy at App. 21)

III.**JURISDICTION**

This Court has jurisdiction under 28 U.S.C. §1257(a).

IV.

STATUTORY PROVISION INVOLVED

49 U.S.C. § 41713(b)(1):

[A] State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier

V.

STATEMENT OF THE CASE

In *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992), and *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995), this Court set out and explicated the law that constitutes the legal background to this case.

In 1958, Congress enacted the Federal Aviation Act of 1958 (FAA), 72 Stat. 731, as amended, 49 U.S.C.App. § 1301 et seq., and empowered the Civil Aeronautics Board (CAB) to regulate the interstate airline industry. *Wolens*, 513 U.S. at 222; *Morales*, 504 U.S. at 378. Subsequently, Congress abolished the CAB and transferred its enforcement authority to the Department of Transportation (DOT). *Id.* at 379.

As enacted, the FAA did not contain a preemption clause. *Wolens*, 513 U.S. at 222; *Morales*, 504 U.S. at 378. But it did contain a saving clause: "Nothing . . . in this [act] shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this [act] are in addition to such remedies." FAA § 1106, 49 U.S.C.App. § 1506. See *Wolens*, 513 U.S. at 222; *Morales*, 504 U.S. at 378. As a result, states were free to regulate the interstate airline industry through the remedies preserved by the